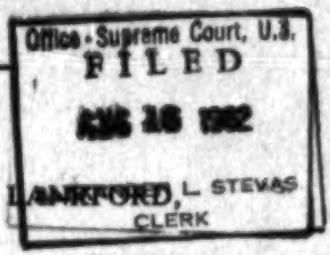
No. 82-73

In The

Supreme Court of the United States



October Term, 1982

THOMAS CRAIG, JR. and ORRIN T. LANKFORD,

Petitioners,

vs.

SIDNEY BARNEY, Commonwealth's Attorney, City of Petersburg; GREGORY WELSH, Deputy Commonwealth's Attorney; PHILLIP R. BROOKS, SEYMOUR BATES, ALVIN SHEFFIELD, CARLISS A. BATTS, ESTELLE G. EVANS, WILLIAM F. McCOY, ELBERT L. PUGH, Special Grand Jury Members,

Respondents.

BRIEF IN OPPOSITION TO PETITIONERS' APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

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QUESTIONS PRESENTED

1. Whether federal courts should abstain from exercising jurisdiction when asked to enjoin pending State Special Grand Jury proceedings.

2. Whether res judicata and collateral estoppel precluded the lower courts from reaching the merits of this case.

3. Whether the Special Grand Jury's exercise of its statutory subpoena powers violated the petitioners' First Amendment rights.

4. Whether the subpoenas issued by the Special Grand Jury were violative of the petitioners' Fifth Amendment rights.

5. Whether issuance of the Special Grand Jury subpoenas violated petitioners' due process rights.

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BRIEF IN OPPOSITION TO PETITIONERS' APPLICATION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

OPINION BELOW

On May 20, 1982, the United States Court of Appeals for the Fourth Circuit filed a published opinion affirming the decision of the United States District Court for the Eastern District of

Virginia, at Richmond; the Honorable D. Dortch Warriner, District Judge presiding, abstaining from the consideration of the merits under the *Younger v. Harris* doctrine. The Court of Appeals found that the doctrine of federal abstention espoused in *Younger v. Harris* was applicable to the case and that Virginia's interest in the unfettered operation of its grand jury system was an important state interest outweighing the alleged constitutional violations asserted by the petitioners. The Court of Appeals, therefore, did not reach the merits of the case.

JURISDICTION

The judgment of the United States Court of Appeals for the Fourth Circuit was entered May 20, 1982, and that judgment is final. Jurisdiction of this Court has been invoked under Title 28 U.S.C. §1254.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The provisions of the First, Fourth, Fifth and Fourteenth Amendments to the Constitution and the provisions of Virginia Code Annotated §§19.2-207, 208, 212, 213, 214 have been set forth in petitioners' appendix.

STATEMENT OF THE CASE

On April 17, 1981, at the request of the Regular Grand Jury, the Honorable Oliver A. Pollard, Circuit Court Judge for the City of Petersburg, impaneled a Special Grand Jury for the April Term. Its purpose was to investigate and report to the Court any condition which tended to promote criminal activity in Petersburg Adult Book Stores. As the respondents have maintained from the outset, this particular Special Grand Jury was not impaneled solely to investigate the narrow area of prostitution. Rather,

alleged prostitution and possible tax evasion violations were only several of numerous areas in which the Special Grand Jury was interested.

On May 22, 1981, the foreman of the Special Grand Jury, pursuant to Va. Code Ann. §19.2-208, issued subpoenas requiring the petitioners to appear before the Special Grand Jury with books, documents and magazines on May 29, 1981. In reference to these subpoenas, the Deputy Commonwealth's Attorney for the City of Petersburg, Virginia wrote the petitioners advising them that their testimony at the Special Grand Jury proceeding could neither be disclosed nor used against them, absent a prosecution for perjury. Pursuant to his subpoena, petitioner Lankford surrendered publications that had been previously inventoried. Petitioner Craig, however, refused to surrender any material, claiming that his First, Fourth, Fifth and Fourteenth Amendment rights had been violated.

On May 29, 1981, at a Special Grand Jury hearing in the Circuit Court of Petersburg, the Honorable Oliver A. Pollard, Jr., ruled that the petitioners were required to appear before the Special Grand Jury as subpoenaed. At this special hearing, the petitioners filed a motion to quash the subpoenas. The Honorable Oliver A. Pollard, Jr. set a hearing for this motion on June 22, 1981.

At the hearing on June 22, 1981, where the petitioners' motion to quash was duly considered, the Honorable Oliver A. Pollard, Jr. ruled that the petitioners could not be compelled to testify under the subpoenas as they failed to provide the petitioners with adequate notice that testimony would be required of them. He also upheld the validity of the subpoenas, insofar as they required the production of documents and magazines.[1] In this hearing the

1. Petersburg Transcript, June 22, 1981, p. 54.

Petersburg Circuit Court scheduled another hearing for June 30, 1981, at which time the Special Grand Jury would submit questions that it intended to ask the petitioners. The Court would then rule whether or not the petitioners could assert their Fifth Amendment rights to any or all of these questions.

On June 30, 1981, the Honorable Oliver A. Pollard, Jr., ruled separately on whether or not any of the proposed questions would violate the petitioners' First, Fourth, Fifth and Fourteenth Amendment rights. Also at this hearing the State Circuit Court Judge again upheld the validity of a portion of the subpoenas.[2] Apparently, however, the petitioners are confused on this point, as they state on the fifth page of the petition that the Court "ruled . . . that the subpoena was invalid". As has been previously alluded to, a complete reading of this transcript[3] reveals that Judge Pollard only reiterated his earlier ruling that questions asked pursuant to the subpoenas were void, as they gave inadequate notice to compel testimony. The subpoenas, however, had already been held to be valid as far as they pertained to the production of books and documents.[4] Also illuminating is the following exchange from the hearing of June 30, 1981:

> "MR. SANDLER: What I'm referring to is the fact that there is a subpoena to produce an object, and if we are ordered by the Court to produce those objects the production of the objects

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2. Petersburg Transcript, June 30, 1981, p. 10.

3. *Id.*, p. 18.

4. Petersburg Transcript, June 22, 1981, p. 54.

in themselves could result in the possible prosecution of the individual who produces them.

THE COURT: The Court hasn't ordered any production of documents. The Court has sustained the validity of the subpoena issued by the Special Grand Jury. There is a difference." pp. 9-10.

Since the first subpoenas were invalid as they applied to the compelling of testimony, both petitioners Craig and Lankford were issued new subpoenas on July 9, 1981. As has been noted, petitioner Lankford was not required to produce documents or magazines under his second subpoena, as he had already complied with the valid portion of the original subpoena. Petitioner Craig however, ignored his original subpoena, and was required to produce documents and magazines in addition to providing testimony.

On July 21, 1981, ten days before the petitioners were to answer questions pursuant to their July 9, 1981, subpoenas, they filed a motion for a 42 U.S.C. §1983 action. With this, they included a request for a temporary restraining order, enjoining the State Special Grand Jury proceedings. The motion was denied in the United States District Court for the Eastern District of Virginia on July 24, 1981. The appellants subsequently filed an amended complaint for a preliminary injunction on August 6, 1981, which was answered by appellees' motion to dismiss the amended complaint on August 13, 1981. This motion to dismiss was granted on September 16, 1981, and an appeal was filed by petitioners in the United States Court of Appeals for the Fourth Circuit on November 20, 1981.

Oral argument before the Court of Appeals was held on March 3, 1982. The Court of Appeals rendered its decision on May 20, 1982 affirming the decision of the United States District

Court for the Eastern District of Virginia to abstain under the doctrine of *Younger v. Harris*. A petition for writ of certiorari was subsequently filed with this Honorable Court, with this brief in opposition addressed thereto.

HOW THE FEDERAL QUESTIONS WERE RAISED

The petitioners raised First, Fourth, Fifth and Fourteenth Amendment issues in state court and in the lower federal courts in an attempt to frustrate the legitimate functions served by a Special Grand Jury in Virginia.

REASONS FOR DENYING THE WRIT

The petition submitted poses no novel or important questions and implicitly asks that this Court's holding in *Younger v. Harris* be reversed.

I.

Federal courts should abstain from exercising jurisdiction when asked to enjoin pending State Special Grand Jury proceedings.

The petitioners have in essence, claimed an immediate and unrestricted right to have their constitutional questions decided by a federal forum while state proceedings are pending. In support of this theory they first cite *Patsy v. Florida Board of Regents*, No. 80-1874, 50 L.W. 4731 (1982), for the proposition that exhaustion of state administrative remedies is not a condition precedent to bringing an action under 42 U.S.C. §1983. This case of course, did not involve any pending state proceedings and only reinforces earlier decisions of this Court. *McNeese v. Board of Education*, 373 U.S. 668, 83 S. Ct. 1433 (1963).

In situations where state proceedings are in progress when federal injunctive relief is requested the decisions of this Court have been quite different. In *Huffman v. Pursue*, 420 U.S. 592, 95 S. Ct. 1200 (1975), the appellee had taken over operation of a theater displaying allegedly obscene movies just prior to the appellants obtaining an Ohio civil judgment, ordering closure of the theater and seizure and sale of personal property used in its operation. Instead of appealing the judgment in the state system, the appellant immediately filed suit in federal district court under 42 U.S.C. §1983, seeking injunctive and declaratory relief against alleged deprivations of his constitutional rights. After some discussion as to when the state court judgment became final, this Court noted the general exhaustion principle of long standing:

> "For regardless of when the Court of Common Pleas judgment became final, we believe that a necessary concomitant of *Younger* is that a party in appellee's posture must exhaust his state appellate remedies before seeking relief in the District Court, unless he can bring himself within one of the exceptions specified in *Younger*." at 608.

The petitioners next allege that applying the principle espoused in *Juidice v. Vail*, 430 U.S. 327, 97 S. Ct. 1211 (1977) to the instant case is contrary to the legislative intent of 42 U.S.C. §1983, and that they have not had an opportunity to present their federal claims in the state proceedings. Both allegations are wanting in merit. In *Vail*, the appellees were held in contempt for disobeying subpoenas to appear in supplemental proceedings brought by judgment creditors. There, the appellees did not appear in any of the New York courts to raise their constitutional claims. In holding that an opportunity to present federal claims in a state proceeding is all that is required to invoke abstention, this Court first noted:

> "The contentions made before the District Court, however, could have been raised by appellees in the state courts as a defense to the ongoing proceedings. Had the County Court ruled against these contentions, appellees could have appealed to the Appellate Division of the Supreme Court. They chose, by resorting to the federal courts, not to avail themselves of this forum afforded by the State of New York." at 330.

Petitioners in the case at bar were actually present in state court on several occasions to raise issues that were again raised in federal district court. They were, therefore, never in the position of being placed between "the Scylla of intentionally flouting state law and the Charydbis of foregoing what [they] believe to be constitutionally protected activity. . . ." *Steffel v. Thompson*, 415 U.S. 452, 94 S. Ct. 1209 (1974). The fact that their motion to quash was denied does not of course, indicate that they were not given ample opportunity to present federal issues in a Virginia forum. They should have appealed the denial of their motion to quash to the Supreme Court of Virginia. *N.A.A.C.P. v. Committee*, 199 Va. 665, 101 S.E. 2d 631 (1958). Even assuming arguendo, that petitioners were found guilty of contempt subsequent to failing to note an appeal of the denial of their motion to quash they like the appellees in *Vail*, could have appealed this decision to a higher state court. *Robertson v. Commonwealth*, 181 Va. 520, 25 S.E. 2d 352 (1943).

It is also apparent that the legislative intent of 42 U.S.C. §1983 and the holdings of *Vail* and other *Younger* progeny are not in conflict. *Vail* of course, examined the substantiality of a state's interest in operating its own civil and criminal enforcement institutions without interference from federal district courts. In noting the broad scope of *Younger* this Court held that *Younger* and *Huffman* principles were not confined solely to the types of

state actions which were sought to be enjoined in those cases. *Vail* at 334.

In *Stefanelli v. Minard*, 342 U.S. 117, 72 S. Ct. 118 (1951), this Court had an opportunity to reiterate its construction of 8 U.S.C. §43, now 42 U.S.C. §1983. There the petitioner asked a federal district court to enjoin the use of illegally seized evidence in a state criminal trial. This Court stated:

> "Regardless of the differences in particular cases, however, this Court's lodestar adjudication has been that the statute 'should be construed so as to respect the proper balance between the states and the federal government in law enforcement.' *Screws v. United States*, 325 U.S. 91, 108, 65 S. Ct. 1031, 1039, 89 L. Ed. 1495. Only last term we reiterated our conviction that the Civil Rights Act 'was not to be used to centralize power so as to upset the federal system.' " *Collins v. Hardyman*, 341 U.S. 651, 71 S. Ct. 937, 940 (1951) at 121.

It should also be noted that a federal district court's decision to abstain should not be overturned on appellate review unless its action constituted an abuse of discretion. *Public Citizen Health Research Group v. Commission on Medical Discipline of Maryland*, 573 F. 2d 863, 866 (4th Cir. 1978); *Baggett v. Bullitt*, 377 U.S. 360, 375, 84 S. Ct. 1316, 1324 (1964). Since the petitioners failed to demonstrate any abuse of discretion, the Court of Appeals correctly affirmed the decision below.

II.

The doctrines of res judicata and collateral estoppel precluded the lower courts from reaching the merits of this case.

The petitioners have offered an incomplete definition of res judicata that conveniently ignores situations where an issue could have been litigated in a given forum. Also absent is any explanation of the related doctrine of collateral estoppel. In *Allen v. McCurry*, ____ U.S. ____, 101 S. Ct. 411, 414 (1980), this Court succinctly defined and elaborated upon both concepts:

> "Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised on that action. *Crowell v. County of Sac*, 94 U.S. 351, 352, 24 L. Ed. 195. Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case. *Montana v. United States*, 440 U.S. 147, 153, 99 S. Ct. 970, 973, 59 L. Ed. 2d 210. As this court and other courts have often recognized, res judicata and collateral estoppel relieve parties of the cost and vexation of multiple lawsuits conserve judicial resources and by preventing inconsistent decisions." at 414.

Apparently, the petitioners have advanced two reasons why the doctrines of res judicata and collateral estoppel should not apply to the case at bar. On the twelfth page of their petition they claim that distinctly different issues are involved in attempting to quash a subpoena in state court and seeking declaratory and injunctive relief in federal court. The petitioners next allege that

their constitutional issues were not directly determined as the state court "merely upheld the validity of the issued subpoenas without comment as to the constitutional claims attempted to be raised."[5] Through this line of reasoning petitioners implicitly conclude that the state court's decision upholding the validity of the subpoenas was interlocutory and as such, not a final judgment for res judicata purposes.

In relation to their first argument challenging the identity of issues, petitioners by their own admission noted that ". . . while the Honorable Oliver A. Pollard, Jr., Judge of the Circuit Court of Petersburg, Virginia was presented with plaintiffs' First, Fourth and Fifth Amendment claims, and may not have been persuaded by them with regard to the production of documents, he refused to order that the materials in question be produced as subpoenaed."[6] These are of course, the precise claims that the petitioners attempted to relitigate in federal court. It is further submitted that the petitioners have in effect, attempted to abolish the res judicata doctrine by claiming that it has no application where issues are decided adversely to litigants. At the hearing before the federal district court on July 24, 1981, counsel for the petitioners stated:

> "And the reason we're here, Your Honor, to be very frank with you, is because we have gotten some relief through the Circuit Court in Petersburg. But the rulings in connection with the production of material that's presumptively protected by the first amendment has been adverse

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5. Petition for Writ of Certiorari, p. 12, footnote 6.

6. *Id.* at p. 46a.

> to us and we can't appeal it *because it's an interlocutory* order."[7]

The petitioners in support of their second argument, characterize the state court's denial of their motion to quash as interlocutory and cite *Alexander v. United States,* 201 U.S. 117, 26 S. Ct. 356 (1906), for this proposition. This case involved a federal circuit court's order directing witnesses to answer questions and produce written documents before a special examiner investigating antitrust violations. Virginia law however, is more permissive and applicable to the case at bar. *N.A.A.C.P. v. Committee,* 199 Va. 665, 101 S.E. 2d 631 (1958). There a joint committee of the State Legislature was charged with the responsibility of determining whether laws of the Commonwealth of Virginia relating to the administration of justice were being administered. Like the Special Grand Jury in the case at bar, the committee had investigative duties that sometimes mandated the issuance of subpoenas. The N.A.A.C.P. was issued two subpoenas, one in February of 1957 requesting the names and addresses of its principal officers and its expenditures, and another in March, 1957, seeking similar and additional information. On the first page of its opinion, the Supreme Court of Virginia writing through Justice Eggleston stated:

> "This writ of error was granted to review an order denying a motion to quash and dismiss two subpoenas which had been issued pursuant to the orders of the court below upon the ex parte motions of a joint legislative committee created by an Act of the General Assembly (Acts 1956, Ex. Sess. Ch. 34, p. 35)." *N.A.A.C.P.* at 667.

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7. Federal District Court Transcript, July 24, 1981, pp. 6-7.

The respondents would submit that the state court's ruling denying petitioners' motion to quash and upholding the validity of the subpoenas was similarly a final judgment. Therefore, the petitioners were precluded by the related doctrines of res judicata and collateral estoppel from asserting their claims in federal court. Their proper course should have been an appeal of the denial of their motion to quash to the Supreme Court of Virginia. In bypassing this necessary step, they have in essence, attempted to appeal a Virginia Circuit Court decision to federal court. Clearly, the federal district court below had no appellate jurisdiction from state courts.

III.

The Special Grand Jury's exercise of its statutory subpoena powers did not violate petitioners' First Amendment rights.

The petitioners have cited numerous cases to support their position that bookstores presumptively enjoy First Amendment protection. Nevertheless, the respondents would urge this Court not to extend the holdings of these cases to the current factual situation which does not involve either the introduction of evidence in a criminal trial or the suppression and return of evidence seized under a constitutionally infirm search warrant. Again, the petitioners have wrongfully alleged that the subpoenas issued on May 22, 1982 were subsequently held invalid on June 22, 1981.[8] The respondents would reiterate that these subpoenas were held invalid only insofar as they required testimony. The Honorable Oliver A. Pollard, Jr., did however, sustain the validity of the portion of the subpoenas requiring the production of books and documents.

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8. Petition for Writ of Certiorari, p. 14, footnote 8.

The petitioners next allege that since the materials subpoenaed are presumptively protected by the First Amendment, they must before seizure, be proven at a prior adversarial hearing to be obscene. In response, the respondents would submit this Court's position relating to the administration and enforcement of a state's criminal laws. In *Perez v. Ledesma,* 401 U.S. 82, 91 S. Ct. 674 (1971), the plaintiff operated a newstand that sold allegedly obscene books, magazines and playing cards. After some of these items were seized, the plaintiff filed suit in the United States District Court for the Eastern District of Louisiana. There a three-judge court found that the articles had been illegally seized, as there had been no prior adversary hearing on the character of the seized materials. The Court then entered a suppression order, requiring the return of the seized materials to the plaintiffs. In reversing the lower court's order, this Court referred to *Stefanelli v. Minard,* 342 U.S. 117, 72 S. Ct. 118 (1951) and stated:

> "Here Ledesma was free to present his federal constitutional claims concerning his arrest and seizure of materials or other matters to the Louisiana courts in the matter permitted in that State. Only in cases of proven harrassment or prosecutions undertaken by state officials in bad faith without hope of obtaining a valid conviction and perhaps in other extraordinary circumstances where irreparable injury is shown is Federal injunctive relief against pending state prosecutions appropriate. There is nothing in the record before us to suggest that Louisiana officials undertook these prosecutions other than in a good faith attempt to enforce the State's criminal laws. We therefore hold that the three-judges court improperly intruded into the state's own criminal process and reverse its order suppressing evidence

> in the pending state prosecution and directing the return of all seized materials." at 85.

The petitioners have also alleged in conclusory terms that the Special Grand Jury has "chilled" the excercise of their First Amendment rights by casting suspicion upon the material subpoenaed. They of course, have not even been indicted and claim no substantial business losses as a result of the Special Grand Jury's investigation. In *Laird v. Tatum*, 408 U.S. 1, 92 S. Ct. 2318 (1972), this Court noted:

> "Allegations of a subjective 'chill' are not an adequate substitute for a claim of specific present objective harm or a threat of specific future harm: 'the federal courts established pursuant to Article III of the Constitution do not render advisory opinions.' " *United Public Workers of America (C.I.O.) v. Mitchell*, 330 U.S. 75, 89, 67 S. Ct. 556, 564, 91 L. Ed. 754 (1947). at 13-14.

In the instant case the respondents were interested only in the fair investigation and enforcement of the criminal laws of the State of Virginia. While petitioners' claims are phrased in language common to the case allowing federal equitable intervention, they have failed to show any of the special circumstances that must first be established. *O'Shea v. Littleton*, 414 U.S. 488, 94 S. Ct. 669 (1974).

IV.

The subpoenas issued by the Special Grand Jury were not violative of petitioners' Fifth Amendment rights.

In *United States v. Mandujano*, 425 U.S. 564, 96 S. Ct. 1768 (1976), this Court noted the function of a grand jury and further commented upon its summoning of witnesses:

> "It is in keeping with the grand jury's historic function as a shield against arbitrary accusations of crime to call before it persons suspected of criminal activity, so that the investigation can be complete. This is true whether the grand jury embarks upon an inquiry focused upon individuals suspected of wrongdoing, or is directed at persons suspected of no misconduct but who may be able to provide links in a chain of evidence relating to criminal conduct of others or is centered upon broader problems of concern to society. It is entirely appropriate — indeed imperative — to summon individuals who may be able to illuminate the shadowy precincts of corruption and crime." at 573.

The petitioners in the instant case have completely disregarded the very nature of a Virginia Special Grand Jury subpoena, and have instead, assumed that evidence is being improperly secured for use in future criminal trials against them. A close examination of Virginia's statutory scheme reveals that this assumption is without foundation.

The function of a Virginia Special Grand Jury is limited to investigating and making a report concerning any condition which involves or tends to promote criminal activity, either in the community or by any governmental authority, agency or official thereof. Va. Code Ann. §19.2-191(2). Every member of a Special Grand Jury is required to keep secret all proceedings. Va. Code Ann. §19.2-192. The Special Grand Jury may subpoena witnesses and specified records, papers and documents, and the foreman must warn each witness that he need not answer any questions or produce any documents that would tend to incriminate him and that he may have counsel present when he appears to testify. Va. Code Ann. §19.2-208. The attorney for the Commonwealth

may be present during the investigatory state if requested by the Special Grand Jury and may also be present when legal advice is requested. Va. Code Ann. §19.2-210. All proceedings must be recorded and transcribed, but all notes and transcripts are for the sole use of the Special Grand Jury and must be sealed after the Special Grand Jury has completed its use of them. They can thereafter only be divulged on order of the court if a witness is charged with perjury before the Special Grand Jury. Va. Code Ann. §19.2-212. At the conclusion of its deliberation, the Special Grand Jury must file a report with the court, which can only be unsealed by court order. Va. Code Ann. §19.2-213.

Very clearly, a Virginia Special Grand Jury does not gather evidence for use in the regulation of any business. As has been noted, any evidence is sealed and can only be opened in the case of perjury on court order and its report can only be divulged on court order. Petitioners neither challenge the constitutionality of the statutes under which the subpoenas were issued, nor cite any cases which prohibit a Virginia Special Grand Jury from issuing subpoenas requiring witnesses to appear and present materials.

It should also be stressed that since the Special Grand Jury proceeding was not an obscenity trial, the material subpoenaed could not "speak for itself." For this reason, any alleged Fifth Amendment violations are at best, highly speculative. It is only speculation that the Special Grand Jury would refer any recommendations to the Regular Grand Jury for appropriate action, and it is likewise speculative to assume that the Regular Grand Jury, if presented with such recommendations, would decide to indict the petitioners. Furthermore, even if the petitioners were indicted in state court, any information obtained from the Special Grand Jury proceeding would be legally inadmissible at their trial. Again, it would be only speculative to assume that the Honorable Oliver A. Pollard, Jr., would incorrectly overrule

the petitioners' motion to suppress because he had "participated in the motion to quash the subpoena".[9] Therefore, given no evidence of any immediate irreparable injury, federal injunctive relief below would have amounted to an ongoing federal audit of state criminal proceedings. *O'Shea, supra,* at 500.

V.

The Special Grand Jury subpoenas did not violate the petitioners' due process rights under the Fourteenth Amendment.

The petitioners contend that a determination of obscenity by a detached magistrate as well as other procedural mandates affirmed by this Court were not followed in the case at bar. These requirements are however, totally inapplicable to the Special Grand Jury subpoenas in the instant case. As has been mentioned, these cases involve evidence that is improperly sought to be introduced at criminal trials or situations where items are seized pursuant to a constitutionally infirm search warrant.

In the case at bar, petitioners were given full opportunity in state court to show cause why they should not have produced the subpoenaed materials.[10] *Consolidated Rendering Co. v. Vermont,* 207 U.S. 541, 551, 28 S. Ct. 178 (1908). Therefore, they were provided with the due process safeguards they claim were lacking and the injunctive relief sought was correctly denied.

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9. Federal District Court Transcript, July 24, 1981, p. 21.

10. *See* Petersburg Transcripts, June 22, 1981 and June 30, 1981.

CONCLUSION

Petitioners have asked this Court to open the door to potentially unlimited federal intervention in state proceedings. For this and the foregoing reasons, it is respectfully requested that their petition for writ of certiorari be denied.

Respectfully submitted,

SIDNEY BARNEY
Attorney for Respondents